(1)

Supreme Court, U.S.
FILED

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OFFICE OF THE CLERK

No.

IN THE

Supreme Court of the United States

MOHAMMAD KHAN AND ERUM SYEDA,
Petitioners

v.

JOHN D. ASHCROFT,
UNITED STATES ATTORNEY GENERAL, ET AL.
Respondents

On Petition For Writ Of Certiorari
To The United States Court of Appeals
For The Seventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Courts of Appeals have jurisdiction to review denials of motions to reopen applications for suspension of deportation under Immigration and Nationality Act § 244, 8 U.S.C. § 1254, consistent with the Ninth Circuit's ruling in *Arrozal v. INS*, 159 F.3d 429 (9th Cir. 1998).

2. Whether the Seventh Circuit Court of Appeals should have transferred the Petition for Review to the Court of Appeals for the Ninth Circuit where venue was proper under 8 U.S.C. § 1252(b)(2).

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OPINIONS BELOW

The orders of the Seventh Circuit U.S. Court of Appeals (App. A1-A5) are unpublished. The opinions of the Board of Immigration Appeals (App. A7-A14) are unreported.

JURISDICTION

The order of the court of appeals was entered on November 13, 2003 (App A4). Petitioners' motion to reconsider was denied on December 31, 2003 (App. A3). This jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

RELEVANT PROVISIONS

8 U.S.C. § 1254(a), repealed by Illegal Immigration Reform and Immigrant Responsibility Act ("IIRIRA"), Sept. 30, 1996, P.L. 104-208, Div C, Title III, Subtitle A, § 308(b)(7), 110 Stat. 3009-615 (effective as provided by § 309(a) of such Act, which appears as 8 USCS § 1101 note) provides that:

> (a) Adjustment of status for permanent residence; As hereinafter prescribed in this section, the Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien (other than an alien described in section 1251(a)(4)(D) of this title) who applies to the Attorney General for suspension of deportation and-- (1) is deportable under any law of the United States except the provisions specified in paragraph (2) of this subsection; has been physically present in

> the United States for a continuous period of not less than seven years immediately preceding the date of application, and proves that during all of such period he was and is a person of good moral character; and is a person whose deportation would, in the opinion of the Attorney General, result in extreme hardship to the alien or to his spouse, parent, or child, who is a citizen of the United States or an alien lawfully admitted for permanent residence;...

See Appendix for text:

8 U.S.C. § 1252, as amended by IIRIRA § 306. Judicial review of orders of removal.

STATEMENT

Petitioners, husband and wife, are natives and citizens of Pakistan. Male petitioner, Mohammad Khan, entered the United States on or about March 22, 1986, at the age of twenty-four, as a nonimmigrant student.[1] Female petitioner, Erum Syeda, entered the United States on or about August 9, 1989, at the age of sixteen as a nonimmigrant visitor for pleasure. On January 8, 1997, the Immigration and Naturalization Service (INS) served on petitioners an Order to Show Cause (OSC), charging

---

[1] Counsel of Record and the United States Court of Appeals for the Seventh Circuit did not receive the Certified Administrative Record from the U.S. Department of Justice, Civil Division, Office of Immigration Litigation, in this instant case. All relevant materials currently in Counsel's possession have been included in the Appendix.

petitioners with deportability. Male petitioner was charged under Section 241(a)(1)(c)(1) of the Immigration and Nationality Act (INA), 8 U.S.C. 1251(a)(1), for failing to comply with the conditions of the nonimmigrant status under which he was admitted. Female petitioner was charged under INA § 241(a)(1)(B) for remaining in the United States longer than permitted. At the time that the INS served the OSC, male petitioner and female petitioners had resided continuously in the United States for eleven years and seven years respectively.

Petitioners filed their applications for asylum and suspension of deportation under INA §244(a)(1), 8 U.S.C. 1254(a)(1) (1994). Under INA Section 244(a)(1), the Attorney General had the authority to suspend the deportation of an alien who (as pertinent here) had been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of his application for suspension, who proved that during all of that period he was a person of good moral character, and whose deportation would result in extreme hardship to the alien or to his citizen or lawful permanent resident alien spouse, parent, or child. *See* 8 U.S.C. § 1254(a)(1) (1994, repealed).

On December 1, 1998, the immigration judge (IJ) in Los Angeles, California, denied petitioners' applications for asylum and suspension of deportation, but granted them voluntary departure. The IJ conceded that petitioners had met their burden of proof establishing seven years continuous physical presence prior to the serving of the OSC, and found them both to be persons of good moral character. However, the IJ adversely determined that

petitioners' deportation would not result in "extreme hardship" if forced to return to Pakistan. The IJ granted petitioners voluntary departure, and in the alternative ordered petitioners deported to Pakistan.

Petitioners appealed from the IJ's decision to the Board of Immigration Appeals (BIA). On January 22, 2003, the BIA summarily denied petitioners' appeal. (A10-A14). Petitioners subsequently filed a motion to reopen with the BIA, requesting that the BIA reconsider its decision or remand proceedings for further consideration on the new evidence submitted. On June 2, 2003, the BIA denied petitioners' motion stating only that "[w]e have considered the respondent's motion papers but we do not find that reopening of the proceedings is warranted." (A7-A9).

Petitioners filed a Petition for Review with the Seventh Circuit Court of Appeals. During the pendency of the Petition for Review, petitioners received a baggage and board order from the INS dated August 25, 2003, stating that petitioners were to report for deportation on September 25, 2003. Petitioners filed a Motion for Stay of Removal on September 23, 2003. The court ordered the petitioners deportation temporarily stayed pending the resolution of the motion. (A6). The respondents filed a Motion to Dismiss and in the Alternative to Transfer on October 9, 2003. In an order dated November 13, 2003, a three judge panel narrowly ruled to deny petitioners' stay of removal, and dismiss their Petition for Review, citing that courts of appeals "...do not have jurisdiction to review discretionary denials of applications for suspension of deportation." (A4-A5) Judge Ilana Rovner dissented and voted to transfer the

petitioners' appeal to the Court of Appeals for the Ninth Circuit. (A5)

ARGUMENT

Petitioners argue that the court of appeals erred in concluding that they were barred from seeking judicial review of the BIA's dismissal of their motion to reopen. The court of appeals improperly dismissed the petitioners' appeal, stating that it was without jurisdiction to consider the Petition for Review citing *Plich v. INS,* 129 F.3d 969 (7th Cir. 1997). However, petitioners sought review of an order denying their motion to reopen, and the courts of appeals do have jurisdiction to consider whether or not the BIA abused its discretion in denying the motion wherein the underlying order is not barred from judicial review. Petitioners contend that the Seventh Circuits decision to dismiss their petition for review relying on *Plich v. INS* conflicts with the decision of the Ninth Circuit Court of Appeals in *Arrozal v. INS,* 159 F.3d 429, 431 (9th Cir. 1998).

Moreover, if the Seventh Circuit Court of Appeals found that it did not have jurisdiction to consider the matter, the case should have been transferred to the Court of Appeals for the Ninth Circuit, where jurisdiction was proper under INA § 309(c)(4)(D), 8 U.S.C. § 1252(b)(2), as "the petition for review shall be filed with the court of appeals for the judicial circuit in which the administrative proceedings before the special inquiry officer or immigration judge completed the proceedings," and as argued by the government's attorney in their Motion to Dismiss and in the Alternative to Transfer.

Furthermore, this case presents a suitable vehicle for resolution of these issues. Further review is therefore warranted.

I. Suspension of Deportation

Congress enacted 8 U.S.C § 1254 for purpose of granting to Attorney General discretion to ameliorate hardship and injustice (decided under former 8 U.S.C § 1254 [repealed]). *Moon Ho Kim v. INS*, 168 US App DC 283, 514 F2d 179 (1975). Statutory provisions relating to suspension of deportation are designed to ameliorate drastic consequences of orders of deportation (decided under former 8 U.S.C. § 1254 [repealed]). *Fong v. INS,* 308 F2d 191 (1962). To be eligible for suspension of deportation, alien must prove: (1) continuous physical presence in United States for immediately preceding 7 years, (2) good moral character, and (3) extreme hardship to himself or to his spouse, parent, or child, who is United States citizen or lawful permanent resident. *Jong Shik Choe v. INS,* 597 F2d 16 (9th Cir. 1979).

Under 8 U.S.C. § 1254(a)(1), factors which support finding of extreme hardship entitling alien to suspension of deportation include (1) alien's contribution to his community, (2) effects of alien's separation from family, including extreme hardship caused to alien's citizen child by alien's deportation, and (3) economic hardship to alien (decided under former 8 U.S.C. § 1254(a)(1) [repealed]). *Villena v. INS*, 622 F2d 1352 (9th Cir. 1980). The BIA clearly abused its discretion in refusing petitioners' motion

to reopen, because the BIA did not consider every hardship factor alleged by petitioners.

II. Judicial Review

There are three provisions of IIRIRA, now codified at 8 U.S.C. §§1252(a)(1), 1252(a)(2)(B), and 1252(b)(9), drastically changed the courts of appeals review. The term "judicial review" and "jurisdiction to review" are now the focus of each of these three provisions. As amended by §306 of IIRIRA, 8 U.S.C. §1252(a)(1) (1994 ed., Supp. V) now provides that, with certain exceptions, including those set out in subsection (b) of the same statutory provision, "[j]udicial review of a final order of removal . . . is governed only by" the Hobbs Act's procedures for review of agency orders in the courts of appeals. Similarly, §1252(b)(9), which addresses the "[c]onsolidation of questions for judicial review," provides that "[j]udicial review of all questions of law and fact, including interpretation and application of constitutional and statutory provisions, arising from any action taken or proceeding brought to remove an alien from the United States under this subchapter shall be available only in judicial review of a final order under this section." Finally, §1252(a)(2)(B), which concerns "[m]atters not subject to judicial review," states:

> Notwithstanding any other provision of law, no court shall have jurisdiction to review --
>
> (i) any judgment regarding the granting of relief under section 212(h), 212(i), 240A,

240B, or 245 [*8 USCS § § 1182*(h), 1182(i), 1229b, 1229c, or 1255], or

(ii) any other decision or action of the Attorney General the authority for which is specified under this title [*8 USCS § § 1151* et seq.] to be in the discretion of the Attorney General, other than the granting of relief under section 208(a) [*8 USCS § 1158*(a)].

Congress does not explicitly state that the courts of appeals are divested of jurisdiction to review the denial of relief under INA § 244(a), 8 U.S.C. § 1254(a) (repealed). The transitional rules of the IIRIRA, which apply to those cases in which proceedings commenced prior to April 1, 1997, and a final order of deportation or exclusion order was filed after October 30, 1996, state that there is no review of discretionary decisions under INA § 244 wherein the BIA has addressed the merits of the alien's request for relief. *Kalaw v. INS*, 133 F. 3d 1147, 1150 (9th Cir. 1997).

However, direct judicial review remains over the statutory elements. *Id.* The plain language of IIRIRA precludes the courts of appeals' direct judicial review of the Attorney General's discretionary decisions. However, assessing some of the aspects of statutory eligibility for suspension of deportation requires application of law to factual determinations. There are clearly aspects of statutory eligibility not involving the exercise of discretion wherein judicial review remains.

"Traditionally, courts recognized a distinction between eligibility for discretionary relief, on the one hand, and the

favorable exercise of discretion, on the other hand." *INS* v. *St. Cyr*, 121 S. Ct. 2276 (2001) (*citing* Neuman, 113 Harv. L. Rev., at 1991 (noting the "strong tradition in habeas corpus law . . . that subjects the legally erroneous failure to exercise discretion, unlike a substantively unwise exercise of discretion, to inquiry on the writ")). Eligibility that was "governed by specific statutory standards" provided "a right to a ruling on an applicant's eligibility," even though the actual granting of relief was "not a matter of right under any circumstances, but rather is in all cases a matter of grace." *Jay* v. *Boyd,* 351 U. S. 345, 353-354 (1956); *INS* v. *St. Cyr*, 121 S. Ct. 2276 (2001). There are clearly aspects of a denial of a right to a ruling, wherein the BIA's perfunctory decision barely amounts to review.

III. Motions to Reopen

In the present case, the matter concerns whether the courts of appeals have been divested of jurisdiction to review motions to reopen. The granting of a motion to reopen is discretionary. *INS v. Doherty,* 112 S. Ct. 502 U.S. 314 at 724, 1992 U.S. LEXIS 376; *INS v. Rios-Pineda*, 471 U.S 444 at 449, 105 S. Ct. 2098, 85 L. Ed. 2d 452 (1985). Accordingly, the courts of appeals review the BIA's decision to deny Petitioners' motion to reopen only for abuse of discretion. *Doherty,* 112 S. Ct. at 725; *INS v. Abudu,* 485 U.S. 94, 105, 108 S. Ct. 904, 99 L. Ed. 2d 90 (1988); *Wijeratne v. INS,* 961 F.2d 1344, 1348 (7th Cir. 1992). "In this circuit, the BIA does not abuse its discretion and the denial of a motion to reopen will be upheld 'unless it was made without a rational explanation…' *Wijeratne,* 961 F.2d at 1348 *quoting Achacoso-Sanchez v. INS,* 779 F.2d 1260, 1265 (7th Cir. 1985).

The courts of appeals review for an abuse of discretion the BIA's denial of a motion to reopen. *Watkins v. INS*, 63 F.3d 844, 847 (9th Cir. 1995). The BIA abuses its discretion when it "fails to state its reasons and show proper consideration of *all* factors when weighing equities and denying relief." *Id.* at 849 (emphasis added) (quoting *Yepes-Prado v. INS*, 10 F.3d 1363, 1366 (9th Cir. 1993)). "The BIA . . . decides whether an applicant is entitled to a favorable exercise of agency discretion on a case by case basis by 'taking into account the *social* and *humane* considerations presented in an applicant's favor and balancing them against the adverse factors that evidence the applicant's undesirability as a permanent resident.'" *Rashtabadi v. INS*, 23 F.3d 1562, 1570 (9th Cir. 1994) (emphasis added) (quoting *Yepes-Prado v. INS*, 10 F.3d at 1365-66 (9th Cir. 1993)). "In its determination, the BIA must take into account *all* relevant factors." *Arrozal v. INS*, 159 F.3d 429, 431 (9th Cir. 1998).

In the motion to reopen, petitioners presented evidence about their community involvement, the hardship that her deportation would cause their four citizen children's health and well-being, and information concerning the human rights record of the Pakistan. All these factors must be considered by the BIA in exercising its discretionary powers. *Villena v. INS*, 622 F.2d 1352, 1357-60 (9th Cir. 1990); *Tukhowinich v. INS*, 64 F.3d 460, 463-64 (9th Cir. 1995). The BIA, however, merely made a cursory and generalized analysis, not even addressing the favorable factors. *Jara-Navarrete v. INS*, 813 F.2d 1340, 1342 (9th Cir. 1986) (holding that the BIA's superficial mentioning of petitioner's favorable factors was an abuse of discretion).

In its order denying petitioners' motion to reopen, the BIA did not base its decision upon a finding that petitioners had not established *prima facie* eligibility for relief under 8 U.S.C. § 1254(a)(1), but rather summarily stated that they did not find reopening warranted. Petitioners attacked rationality of the BIA's exercise of discretion.

Additionally, under IIRIRA's transitional rules, unless an exception applies, the courts of appeals have jurisdiction to consider petitioners' appeal from the BIA's denial of their motion to reopen. *See* IIRIRA § 309(c)(1). The peitioners' appeal was dismissed specifically because the INS invoked § 309(c)(4)(E) of IIRIRA, which precludes an appeal of "any discretionary decision under section . . . 244," citing the Seventh Circuit's decision in *Plich v. INS,* 129 F.3d 969 (7th Cir. 1997). However, the Ninth Circuit has supported a finding that the transitional rules do not deny the courts of appeals jurisdiction over motions to reopen. *Arrozal v. INS*, 159 F3d 429 (9th Cir. 1998); *Sarmadi v. INS,* 121 F.3d 1319 (9th Cir. 1997).

The Ninth Circuit found it had jurisdiction to consider an appeal of a motion to reopen to apply for suspension of deportation because the underlying deportation order, which placed the alien in deportation proceedings, was not based on a section of the Immigration and Nationality Act that was precluded from judicial review. The Ninth Circuit reasoned that:

> [I]n considering Sarmadi's motion to reopen, we pointed out that the motion to reopen was intertwined with the deportation order. *Id.* at 1322.

> Because the deportation order was issued under the moral turpitude section, § 237(a)(2)(A)(ii) of the INA, we concluded that the order denying Sarmadi's motion to reopen also should be treated as an order under that moral turpitude section. *See id.* Thus, we concluded that the AEDPA's limitation against reviewing any final order under the moral turpitude section precluded review of the order denying Sarmadi's motion to reopen. *Id.* at 1321.
>
> In this case, Yehdego's deportation order was issued under § 241(a)(2) of the INA for overstaying her visa. Following the rationale of *Sarmadi,* the BIA's order denying Yehdego's motion to reopen should be treated as an order under § 241(a)(2), the overstay section of the INA. But § 241 is not one of the INA sections listed in § 309(c)(4)(E) of the IIRIRA, the section that precludes an appeal from certain discretionary decisions. *Arrozal v. INS*, 159 F.3d 429, 431 (9th Cir. 1998).

This argument most certainly applies to petitioners in the present case. Hence, the courts of appeals do have jurisdiction under IIRIRA's transitional rules to hear petitioners' appeal from the BIA's denial of their motion to reopen.

Additionally, this case is clearly distinguishable from *Plich v. INS*, 129 F.3d 969 (7th Cir. 1997). According to the Seventh Circuit decision,

> [t]he Pilches did not seek any of the remedies for which judicial review is available; they do not

> contend that they or their children would be persecuted or tortured in Poland. All we have is a standard request for relief on economic grounds. Judicial review has been curtailed to expedite the process... *Id.*.

Petitioners in the present case are seeking review of their motion to reopen, under which review is still available. *Arrozal v. INS*, 159 F.3d 429, 431 (9th Cir. 1998).

IV. Venue

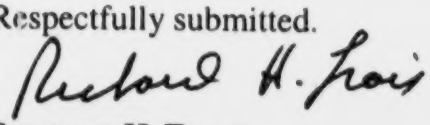
In the Seventh Circuit's divided opinion, Judge Ilana Rovner voted to transfer the petitioners' appeal for the Court of Appeals for the Ninth Circuit. (A5). Petitioners filed their applications for asylum and suspension of deportation, and their case was originally decided by an IJ in Los Angeles, California.

If the Seventh Circuit found that it did not have jurisdiction to consider petitioners' appeal, the case should have been transferred to the Court of Appeals for the Ninth Circuit, where jurisdiction was proper under INA § 309(c)(4)(D), 8 U.S.C. § 1252(b)(2), as "the petition for review shall be filed with the court of appeals for the judicial circuit in which the administrative proceedings before the special inquiry officer or immigration judge completed the proceedings," and as argued by the government's attorney in their Motion to Dismiss and in the Alternative to Transfer.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.



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RELEVENT STATUTORY PROVISIONS

8 U.S.C § 1252. Judicial review of orders of removal

(a) Applicable provisions.

(1) General orders of removal. Judicial review of a final order of removal (other than an order of removal without a hearing pursuant to section 235(b)(1) [*8 USCS § 1225*(b)(1)]) is governed only by chapter 158 of title 28 of the United States Code [*28 USCS § § 2341* et seq.], except as provided in subsection (b) and except that the court may not order the taking of additional evidence under section 2347(c) of such title.

(2) Matters not subject to judicial review.

(A) Review relating to section 235(b)(1). Notwithstanding any other provision of law, no court shall have jurisdiction to review--

(i) except as provided in subsection (e), any individual determination or to entertain any other cause or claim arising from or relating to the implementation or operation of an order of removal pursuant to section 235(b)(1) [*8 USCS § 1225*(b)(1)],

(ii) except as provided in subsection (e), a decision by the Attorney General to invoke the provisions of such section,

(iii) the application of such section to individual aliens, including the determination made under section 235(b)(1)(B) [*8 USCS § 1225*(b)(1)(B)], or

(iv) except as provided in subsection (e), procedures and policies adopted by the Attorney General to implement the provisions of section 235(b)(1) [*8 USCS § 1225*(b)(1)].

8 U.S.C § 1252 *Continued.*

(B) Denials of discretionary relief. Notwithstanding any other provision of law, no court shall have jurisdiction to review--

(i) any judgment regarding the granting of relief under section 212(h), 212(i), 240A, 240B, or 245 [*8 USCS § § 1182*(h), 1182(i), 1229b, 1229c, or 1255], or

(ii) any other decision or action of the Attorney General the authority for which is specified under this title [*8 USCS § § 1151* et seq.] to be in the discretion of the Attorney General, other than the granting of relief under section 208(a) [*8 USCS § 1158*(a)].

(C) Orders against criminal aliens. Notwithstanding any other provision of law, no court shall have jurisdiction to review any final order of removal against an alien who is removable by reason of having committed a criminal offense covered in section 212(a)(2) or 237(a)(2)(A)(iii), (B), (C), or (D) [*8 USCS § § 1182*(a)(2) or 1227(a)(2)(A)(iii), (B), (C), or (D)], or any offense covered by section 237(a)(2)(A)(ii) [*8 USCS § 1227*(a)(2)(A)(ii)] for which both predicate offenses are, without regard to their date of commission, otherwise covered by section 237(a)(2)(A)(i) [*8 USCS § 1227*(a)(2)(A)(i)].

(3) Treatment of certain decisions. No alien shall have a right to appeal from a decision of an immigration judge which is based solely on a certification described in section 240(c)(1)(B) [*8 USCS § 1229a*(c)(1)(B)].

United States Court of Appeals ts
For the Seventh Circuit
Chicago, Illinois 60604

December 31, 2003

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. KENNETH F. RIPPLE, *Circuit Judge*
Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

MOHAMMAD KHAN and ERUM SYEDA Petitioners, No. 03-2743 v. JOHN D. ASHCROFT, United States Attorney General, Respondent.	]]]]]]]	Petition for Review of an Order of the Board of Immigration Appeals Nos. A75-252-009 A75-252-008

Upon consideration of the MOTION TO RECONSIDER, filed on December 15, 2003, by counsel for the petitioner,

IT IS ORDERED that the motion be DENIED.

United States Court of Appeals kh/kl
For the Seventh Circuit
Chicago, Illinois 60604

November 13, 2003

Before

Hon. WILLIAM J. BAUER, *Circuit Judge*
Hon. KENNETH F. RIPPLE, *Circuit Judge*
Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

MOHAMMAD KHAN and ERUM SYEDA Petitioners, No. 03-2743 v. JOHN D. ASHCROFT, United States Attorney General, Respondent.	]]]]]]]	Petition for Review of an Order of the Board of Immigration Appeals Nos. A75-252-009 A75-252-008

The following are before the court:

1. MOTION FOR STAY OF REMOVAL, filed on September 23, 2003, by counsel for the petitioners.

2. RESPONDENTS' MOTION TO DISMISS AND IN THE ALTERNATIVE TO TRANSFER, AND RESPONSE TO MOTION FOR STAY OF REMOVAL, filed on October 9, 2003, by counsel.

3. PETITIONERS' RESPONSE TO RESPONDENT'S MOTION TO DISMISS, TRANSFER AND RESPONSE TO STAY OF REMOVAL, filed on October 22, 2003, by counsel.

IT IS ORDERED that #1 be DENIED, and #2 is GRANTED, to the extent that petitioners' Petition for Review is DISMISSED. Courts do not have jurisdiction to review discretionary denials of applications for suspension of deportation. *See Plich v. INS*, 129 F.3d 969 (7th Cir. 1997).

*Judge Rovner dissents and voted to transfer the petitioners' appeal to the Court of Appeals for the Ninth Circuit.

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

September 24, 2003

Before

Hon. ILANA DIAMOND ROVNER, *Circuit Judge*

MOHAMMAD KHAN and ERUM SYEDA Petitioners, No. 03-2743 v. JOHN D. ASHCROFT, United States Attorney General, Respondent.	]]]]]]]	Petition for Review of an Order of the Board of Immigration Appeals Nos. A75-252-009 A75-252-008

Upon consideration of the MOTION FOR STAY OF REMOVAL, filed on September 23, 2003, by counsel for the petitioners,

IT IS ORDERED that the removal of the petitioners is temporarily STAYED pending the resolution of the motion for stay of removal.

IT IS FURTHER ORDERED that the respondent file a response to the motion by October 8, 2003.

Department of Justice
Executive Office for Immigration Review
Office of the Clerk

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Name: KHAN, MOHAMMAD A75-252-008
Riders: A75-252-009

Date of this notice: 06/02/2003

Enclosed is a copy of the Board's decision and order in the above-referenced case.

s/_____
Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:
GRANT, EDWARD R.

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A75-252-009 – LOS ANGELES

Date: JUN 02 2003

In re: SYEDA, ERUM

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Trais, Richard H., Esquire

ON BEHALF OF DHS: Lee P. Crystal

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen our decision dated January 22, 2003. We have considered the respondent's motion papers but do not find that reopening of the proceedings is warranted. Accordingly, the motion is denied.

s/_____
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A75-252-008 – LOS ANGELES
Date: JUN 02 2003

In re: KHAN, MOHAMMAD

IN DEPORTATION PROCEEDINGS

MOTION

ON BEHALF OF RESPONDENT: Trais, Richard H., Esquire

ON BEHALF OF DHS: Lee P. Crystal

ORDER:

PER CURIAM. The respondent moves the Board pursuant to 8 C.F.R. § 1003.2 to reopen our decision dated January 22, 2003. We have considered the respondent's motion papers but do not find that reopening of the proceedings is warranted. Accordingly, the motion is denied.

s/_____
FOR THE BOARD

A-10

Department of Justice
Executive Office for Immigration Review
Office of the Clerk

5201 Leesburg Pike, Suite 1300
Falls Church, Virginia 22041

Jambusaria, Haresh C., Esquire
3660 Wilshire Blvd.
Suite 926
Los Angeles, CA 90010-0000

Office of the District Counsel/LO
606 S. Olive Street, 8th Floor
Los Angeles, CA 90014

Name: KHAN, MOHAMMAD A75-252-008
Riders: A75-252-009

Date of this notice: 01/22/2003

Enclosed is a copy of the Board's decision and order in the above-referenced case.

s/_____
Jeffrey Fratter
Chief Clerk

Enclosure

Panel Members:
HESS, FRED

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A75-252-009 – LOS ANGELES
Date: JAN 22 2003

In re: SYEDA, ERUM

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jambusaria, Haresh Esq

ON BEHALF OF SERVICE: JoAnn M. Patel, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in *Matter of Chouliaris*, 16 I&N Dec. 168 (BIA 1977), the

alien is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director, and in the event of failure to depart, the alien shall be deported as provided by the Immigration Judge's order.

s/_____
FOR THE BOARD

U.S. Department of Justice
Executive Office for Immigration Review
Falls Church, Virginia 22041

Decision of the Board of Immigration Appeals

File: A75-252-008 – LOS ANGELES
Date: JAN 22 2003

In re: KHAN, MOHAMMAD

IN DEPORTATION PROCEEDINGS

APPEAL

ON BEHALF OF RESPONDENT: Jambusaria, Haresh Esq

ON BEHALF OF SERVICE: JoAnn M. Patel, Assistant District Counsel

ORDER:

PER CURIAM. The Board affirms, without opinion, the results of the decision below. The decision below is, therefore, the final agency determination. *See* 8 C.F.R. § 3.1(e)(4).

FURTHER ORDER: Pursuant to the Immigration Judge's order and in accordance with our decision in *Matter of Chouliaris*, 16 I&N Dec. 168 (BIA 1977), the

alien is permitted to depart from the United States voluntarily within 30 days from the date of this order or any extension beyond that time as may be granted by the district director, and in the event of failure to depart, the alien shall be deported as provided by the Immigration Judge's order.

s/_____
FOR THE BOARD